

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LACHANCE L. THOMAS,

Petitioner,

v.

T. ALLEN,

Respondent.

Case No. 1:23-cv-00690-EPG-HC

ORDER DENYING PETITIONER'S
MOTION TO STAY

(ECF No. 33)

Petitioner Lachance L. Thomas is a state prisoner proceeding *pro se* with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On August 8, 2023, the Court granted Petitioner's motion to stay the proceedings pursuant to Kelly v. Small, 315 F.3d 1063 (9th Cir. 2002). (ECF No. 18.) On September 13, 2023, Petitioner filed a second amended petition ("SAP") containing only exhausted claims. (ECF No. 19.)

On November 8, 2023, the Court stayed the federal habeas proceedings pending exhaustion of state remedies and ordered Petitioner to file an initial status report within thirty days and every ninety days thereafter. (ECF No. 20.) The order forewarned Petitioner that failure to comply with the status report requirement will result in the Court vacating the stay. (Id. at 2.¹)

Petitioner filed an initial status report on December 14, 2023, (ECF No. 21), but thereafter failed to timely file subsequent status reports. The Court ordered multiple orders to

¹ Page numbers refer to the ECF page numbers stamped at the top of the page.

1 show cause, to which Petitioner responded and informed the Court of the status of his state court
2 proceedings. (ECF Nos. 22, 23, 25, 26.) Thus, the orders to show cause were discharged. (ECF
3 Nos. 24, 27.)

4 On December 18, 2024, the Court issued an order to show cause why the stay should not
5 be vacated given over ninety days passed without a subsequent status report. (ECF No. 28.) As
6 no response was filed, on February 24, 2025, the Court vacated the stay and ordered Respondent
7 to file a response to the SAP. (ECF No. 29.)

8 On March 28, 2025, Petitioner filed the instant motion to stay wherein he requests the
9 Court to keep the stay in effect because unexhausted claims are still pending in the state courts.
10 (ECF No. 33.) On April 10, 2025, Respondent filed an opposition to the motion, arguing that “a
11 stay would be pointless” because “Petitioner’s state court effort is devoted solely to a claim of
12 statutory entitlement to resentencing” and “he ‘could never bring a pure statutory-error claim in
13 federal habeas.’” (*Id.* at 2 (quoting *Jones v. Hendrix*, 599 U.S. 465, 490 (2023))).

14 In support of his assertion that unexhausted claims are still pending in the state courts,
15 Petitioner attached a letter from the California Court of Appeal, Fifth Appellate District
16 regarding Case No. F088914/Fresno County Superior Court No. F15904751. (ECF No. 33 at 2.)
17 The letter states that the opening brief was due on February 10, 2025, but that briefing is stayed
18 pending appointment of counsel. (*Id.*) Respondent has filed a copy of the 2024 petition for
19 resentencing pursuant to California Penal Code section 1172.6 filed by Petitioner in the Fresno
20 County Superior Court No. F15904751. (ECF No. 34-3 at 392.) That petition was denied on
21 October 21, 2024. (*Id.* at 398.) On November 4, 2024, Petitioner filed a notice of appeal. (*Id.* at
22 400.) According to the docket sheet of California Court of Appeal, Fifth Appellate District Case
23 No. F088914, Petitioner is appealing the October 21, 2024 denial of his petition for resentencing.
24 (*Id.* at 436.)

25 Whether Petitioner is entitled to resentencing pursuant to California Penal Code section
26 1172.6 is an issue of state law that is not cognizable in federal habeas corpus. *See Wilson v.*
27 *Corcoran*, 562 U.S. 1, 5 (2010) (per curiam) (“[I]t is only noncompliance with federal law that
28 renders a State’s criminal judgment susceptible to collateral attack in the federal courts.”);

1 Estelle v. McGuire, 502 U.S. 62, 67 (1991) (“We have stated many times that ‘federal habeas
2 corpus relief does not lie for errors of state law.’” (quoting Lewis v. Jeffers, 497 U.S. 764, 780
3 (1990))). Accordingly, the Court agrees with Respondent that a stay is not warranted here
4 because the unexhausted claim Petitioner is pursuing in state court is not cognizable in federal
5 habeas.

6 Based on the foregoing, the Court HEREBY ORDERS that:

- 7 1. Petitioner’s motion to stay (ECF No. 35) is DENIED; and
- 8 2. Within thirty (30) days of the date of service of this order, Petitioner may file a traverse.

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10 IT IS SO ORDERED.

11 Dated: May 30, 2025

12 /s/ Eric P. Grogan
13 UNITED STATES MAGISTRATE JUDGE
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